

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	CIVIL ACTION
KENNETH L. HOFFMAN	: 02-CV-3678
Plaintiff	: :
v.	: :
JOHN E. POTTER, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE	: :
Defendants	: :
	: :

**PRE-TRIAL MEMORANDUM OF PLAINTIFF
PURSUANT TO LOCAL RULE 16.1**

I. BRIEF STATEMENT OF THE NATURE OF THE ACTION AND JURISDICTION:

This case arises under the Age Discrimination in Employment Act, as amended, 29 U.S.C. §621, *et sequitur* (“ADEA”) and the Rehabilitation Act of 1973, 29 U.S.C. §701 *et sequitur*.¹ The Court has jurisdiction over the cause of action asserted under the ADEA pursuant to 29 U.S.C. §626(c) and 28 U.S.C. §1331. The Court has jurisdiction over the cause of action asserted under the Rehabilitation Act pursuant thereto.

II. BRIEF STATEMENT OF THE FACTS:

Plaintiff was terminated during his probationary period despite meeting all of the qualifications of the position for which he was hired and meeting those targets which were set for him at the inception of his

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Plaintiff's Amended Complaint cites the Americans with Disabilities Act, however the correct law applicable to Postal Employees such as the Plaintiff is the Rehabilitation Act.

employment. Other younger workers who failed to perform any better than he had kept their positions, but Plaintiff did not. This adverse employment action (and the persecution he suffered during his tenure of employment) were predicated upon the Plaintiff's age.

III. DAMAGES CLAIMED:

At the time of termination, Plaintiff was making approximately \$12.77/hour for a 37.5 hour work week. He started receiving Social Security Disability payments in 1997, at least a year after his termination by the Defendant in April of 1996, so his back pay is at least (but approximately) \$24,901.50 per year. Plaintiff has no objections to adjusting this figure based upon Defendants' payroll records and the official date of the Social Security Disability award letter.

In addition to the foregoing, Plaintiff incurred costs for obtaining health insurance for himself and his family, the cost of which exceeded the cost to the Defendant of providing such service. Again, the costs would run during that period of time between Plaintiff's termination and his subsequently becoming disabled. He also lost the value of any pension and/or retirement plan benefits which would have accrued during that time period.

Plaintiff incurred financial obligations as a result of his loss of income, resulting in a credit card debt and judgments against him of approximately \$20,000.

Finally, Plaintiff has incurred counsel fees in connection with the prosecution of his claim before the EEOC and before This Honorable Court, to be subject to a subsequent Fee Petition at the appropriate time.

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Philadelphia, Pennsylvania 19102

IV. WITNESSES:

A. Liability Witnesses

1. Jeffrey S. Schoch
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460
2. Kenneth Sands
648 Dayton Road
Bryn Mawr, PA 19010
3. Donald Smith
255 First Avenue
Phoenixville, PA 19460
4. Jim Cassano
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460
5. William Garner
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460
6. John Miller
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460
7. Brian Bonsall
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460
8. Phil Marcantonio
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460

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9. Denise Hoffman
20 Winding Way
Malvern, PA 19355

10. Kenneth Hoffman
20 Winding Way
Malvern, PA 19355

B. Damages Witnesses:

1. Jeffrey S. Schoch
USPS, Phoenixville, PA
116 Gay Street
Phoenixville, PA 19460

2. Denise Hoffman
20 Winding Way
Malvern, PA 19355

3. Kenneth Hoffman
20 Winding Way
Malvern, PA 19355

Plaintiff reserves the right to amend this list prior to time of trial and to call any witness identified by Defendant. This list of witnesses is exclusive of any rebuttal and/or impeachment witnesses in accordance with the Federal Rules of Civil Procedure.

V. EXHIBITS:

- P-1 USPS Form 1750 for Plaintiff [KH00863, previously marked Schoch-7]
- P-2 USPS Notice of Personnel Action [KH00864, previously marked Schoch-5]
- P-3 Notice of Termination [KH00861, previously marked Schoch-8]
- P-4 “Clock Rings” [KH01590-KH01715, previously marked collectively Sands-2]
- P-5 Spreadsheets [KH00978-KH00983, previously marked collectively Sands-3 and Schoch-9, in part]

Plaintiff reserves the right to amend this list prior to time of trial and to use and/or introduce any exhibit identified by Defendant. This list of exhibits is exclusive of any rebuttal and/or impeachment exhibits in accordance with the Federal Rules of Civil Procedure.

VI. ESTIMATED TRIAL TIME:

This case should require no more than three or four days of trial time.

VII. SPECIAL COMMENTS:

Plaintiffs are willing to stipulate to the prevailing wage rates for permanent flex time employees and any collectively bargained increases according to scale for the time period from the date of Plaintiff's termination from employment until such time as he was granted full disability benefits according to the Social Security Administration. Plaintiffs will also stipulate to the cost of health insurance which would otherwise have been paid by Defendant for and on behalf of Plaintiff and his spouse and children.

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